

GUIDELINES FOR CONDUCTING
REVIEWS OF ETHICS PROGRAMS AT
EXECUTIVE BRANCH AGENCIES

June 2002

U.S. OFFICE OF GOVERNMENT ETHICS
OFFICE OF AGENCY PROGRAMS
PROGRAM REVIEW DIVISION

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These guidelines are intended to serve as a basic road map for conducting U.S. Office of Government Ethics (OGE) reviews of ethics programs at executive branch departments and agencies. The ethics program reviews are typically scheduled in a program plan for each calendar year which sets forth, by quarter, the departments and agencies to be reviewed and the staff assigned to each review. It should be emphasized that these guidelines are minimal and, where reason dictates, should be exceeded in order to fulfill properly the objective of an ethics review (as described immediately below). This is particularly true as to the performance of the review steps described later in the guidelines.

AUTHORITY AND OBJECTIVE

The authority for conducting ethics program reviews is found in title IV of the Ethics in Government Act of 1978, as amended, and the implementing regulations at 5 C.F.R. part 2638. Under title IV such authority comes from 5 U.S.C. appendix, § 402(b)(3) and (5), wherein the OGE Director is to monitor and investigate individual and agency compliance with the public and confidential financial disclosure requirements; § 402(b)(9), wherein the OGE Director may order corrective action on the part of agencies and employees; and § 402(f), wherein the processes for carrying out corrective action are prescribed. Under 5 C.F.R. part 2638, OGE is

to monitor compliance with the public and confidential reporting requirements (§ 2638.102(a)(4)), and evaluate the effectiveness of programs designed to prevent conflicts of interest (§ 2638.102(a)(6)). Subparts D and E implement the corrective action authority given to the Director under 5 U.S.C. app., § 402(b)(9) and (f).

With this statutory and regulatory authority as a backdrop, the objective of an ethics program review may be articulated. In simple terms, the objective of the review is to determine an ethics program's effectiveness, measured largely by its compliance with applicable ethics laws and regulations. This includes determining whether the program is tailored to the mission of the department or agency, has an effective program structure with adequate staffing, and has a strong monitoring system with effective enforcement mechanisms and internal controls. Individuals performing a review are to conduct themselves as management consultants rather than investigators.

PRE-REVIEW PREPARATION

Each ethics program review should be preceded by thorough preparation. This pre-review preparation should commence well in advance of the entrance conference, signifying the commencement of the review. The preparation should basically consist of gathering background information, a review of any pertinent documents, and discussions with knowledgeable individuals at OGE or elsewhere.

Background information to be gathered should include the agency's mission, size, budget, etc. Pertinent documents to be reviewed should include department or agency-related documents filed in the OGE file according to the OGE Records Retention Schedule as administered by OGE's Information Resources Management Division. In particular, agency correspondence associated with the administration of the ethics program (filed under **ETH 1**) and ethics program review reports (filed under **PRD-Reports**) should be reviewed. The annual Agency Ethics Program Questionnaire (Questionnaire) (filed under **EDU-Training Questionnaire**) should also be reviewed and any discrepancies between the data reported on the Questionnaire and the ethics program review findings should be noted in the working papers for possible inclusion in the report. In addition, the working papers from the previous review, the semiannual agency Inspector General's (IG) report, and any agency-specific legislation should be reviewed.

Discussions with individuals should include a meeting attended by the OGE staff assigned to the review, the OGE desk officer to whom the department or agency to be reviewed is assigned, the Assistant to the Associate Director, Program Reviews or the Associate Director, Program Reviews, and any other individual at OGE who might be knowledgeable concerning the agency's ethics program. If the Assistant to the Associate Director or the Associate Director, Program Reviews is unable to attend the meeting, the Deputy Director, Office of Agency Programs (Deputy Director, OAP) should attend in place of the individual. Beyond

OGE, any relevant information which may be gleaned from agency ethics officials when contacting them to announce the review and schedule the entrance conference would be welcomed. During the review, any questions or problems which arise should promptly be brought to the attention of the Assistant to the Associate Director, the Associate Director, Program Reviews, or the Deputy Director, OAP.

All of the preparation, of course, presupposes that there is a working knowledge of all executive branch-wide statutes, orders, and regulations related to ethics.

After establishing the commencement date of the ethics program review with the agency's ethics official, a confirmation letter will be prepared and sent to the designated agency ethics official (DAEO) or the alternate DAEO.

TIME FRAMES

In general, the number of ethics program reviews scheduled for each team in the program plan for the calendar year should govern the amount of time each team devotes to conducting the fieldwork for each review and writing the report. Within this framework the conduct of the fieldwork should be continuous, not taking longer than four weeks, and the report should be submitted to the Associate Director, Program Reviews within four weeks from the end of the fieldwork. The end of the fieldwork will typically be considered to be the date of the department or agency exit

conference. If the conduct of the fieldwork and the holding of the exit conference are not continuous in time, the end of the fieldwork will be considered to be the date on which all fieldwork other than the exit conference has been accomplished.

REVIEW STEPS

Note: Review will generally focus on the previous calendar year.

I. Compliance with Procedural Requirements.

A. Public financial disclosure system (excluding Special Government employees (SGEs) addressed in I.P. below).

1. Obtain the written procedures the agency has established, pursuant to section 402(d)(1) of the Ethics in Government Act of 1978, as amended (5 U.S.C. app., § 402(d)(1)), for collecting, reviewing, evaluating, and making publicly available public financial disclosure reports (SF 278).
2. Through a review of the procedures and discussions with ethics officials, determine whether or not the procedures conform with all applicable statutes, regulations, and executive orders.
3. Determine whether or not the agency requires the filing of supplemental confidential financial

disclosure reports by public filers under 5 C.F.R. §§ 2634.904(c) and 2634.907(b). If so, determine whether or not:

- a. Supplemental agency regulations have been approved by OGE in accordance with 5 C.F.R. § 2634.103; or

- b. If supplemental agency regulations have not been approved by OGE, supplemental confidential reporting forms and requirements have been approved by OGE in accordance with 5 C.F.R. §§ 2634.601(b) and 2634.901(b).

- 4. As appropriate, obtain copies of the agency's supplemental regulations and reporting forms.

- 5. Determine whether or not the agency is using an electronic SF 278 and, if so:

- a. Determine whether it is a non-fillable, fillable, or "smart" fillable version of the SF 278; and

- b. Review the electronic SF 278 to ensure that:

- (1) It precisely duplicates (to the extent technically possible) the original SF 278;

- (2) It represents the most recent edition, or allowable previous edition, of the SF 278;

- (3) If it varies from the original SF 278 (e.g., continuation pages not included in the original form, etc.), it has been approved by OGE and the General Services Administration (GSA); and
- (4) If it is a "smart" fillable version, it has been approved by OGE, GSA, and the Office of Management and Budget (OMB)¹ and the series of questions or prompts are complete, accurate, and logical.

Note: Likewise, where non-electronically-generated SF 278s are being used, ensure that they are the most recent edition, or allowable previous edition, of the form and, where apparent copies of an original SF 278 are being used, ensure that they precisely duplicate the original SF 278.

Note: Where the ethics program at one or more components of a department or agency is being reviewed, I.A.6. through 14. below need only be applied to the components under review. For example, where the ethics program at the U.S. Mint, U.S. Customs Service, and the Bureau of Engraving and Printing at the Department of the Treasury is being

¹OMB approval is required unless nine or fewer private citizens (including new entrants and terminees) are reasonably expected to use the form per year.

reviewed, the complete judgmental sample required by I.A.11. below would be applied only to those organizations.

6. Obtain a master list of individuals required to file public financial disclosure reports and, as appropriate, the corresponding supplemental confidential reports during the previous calendar year. In addition, if there is doubt as to the completeness or accuracy of the master list, independently verify its completeness or accuracy (e.g., with the personnel or payroll office, against an agency directory, etc.).
7. Obtain from OGE's Program Services Division the current master list of Presidentially-appointed, Senate-confirmed (PAS) employees required to file public financial disclosure reports.
8. Through a review of the agency's and OGE's master lists, determine whether or not there are any discrepancies as to PAS filers and, if so, reconcile the discrepancies.
9. Through a review of the agency's master list and discussions with ethics officials, determine whether or not reports generally have been filed as required in a timely manner in accordance with 5 U.S.C. app., § 101, 5 C.F.R. § 2634.201, the written agency procedures, and, as appropriate, the

supplemental agency regulation, i.e., new entrant reports by no later than 30 days after assuming a covered position (except PAS nominee reports), annual reports by no later than May 15, or termination reports by no later than 30 days after leaving a covered position.

10. Through discussions with ethics officials and others involved in the development of the agency's master list, determine what mechanisms, if any, are in place to identify individuals within 30 days of their entering or leaving a covered position and to provide those individuals with the required financial disclosure report.
11. Using the master list(s), obtain all of the public reports filed by PAS, non-career Senior Executive Service (SES), and Schedule C employees (including for each PAS filer, the reports maintained at both the agency and OGE), and either a 20% judgmental sample of the remaining reports filed by career employees or 40 reports, whichever is greater, but no more than 75. As appropriate, the corresponding supplemental confidential reports should be included. When the 20% sample size exceeds the number of reports necessary to determine a consistent pattern, the Assistant to the Associate Director or the Associate Director, Program Reviews

can authorize an adjustment in the number of reports to be reviewed. By contrast, if an agency has less than 40 reports required to be filed by employees other than PAS, non-career SES, and Schedule C employees, all such reports must be reviewed.

12. Through discussions with ethics officials, determine the status of any reports which could not be obtained.
13. If available, obtain the list(s) of contractors, grantees, regulated companies, prohibited companies, etc., with whom the agency does business or which could be affected by agency actions. Use any such list(s) accordingly in reviewing the public reports in I.A.14. below.
14. Review the reports which have been obtained to ensure that the reports:

PAS Annual and Termination Public Reports

- a. Have been filed in a timely manner;
- b. Have been reviewed and certified by the agency by no later than 60 days after being filed, in accordance with 5 U.S.C. app., § 106(a)(1), 5 C.F.R. § 2634.605, the written agency procedures, and, as appropriate, the supplemental agency regulations;

Note: Only continue with review steps I.A.14.c. through e. below for PAS annual or termination reports which have been reviewed by the agency.

- c. In the case of annual reports, have been copied and forwarded to OGE for review immediately after being certified but generally no later than August 1, in accordance with 5 C.F.R. § 2634.602(c)(1) and (2) and OGE policy;²
- d. In the case of termination reports, have been copied and forwarded to OGE for review immediately after being certified, in accordance with 5 C.F.R. § 2634.602(c)(1) and (2) and OGE policy; and
- e. Have been reviewed and certified by OGE by no later than 60 days after being forwarded to OGE, in accordance with 5 U.S.C. app., § 106(a)(1) and 5 C.F.R. § 2634.605;

All Other Public Reports (from non-PAS filers)

- a. Have been filed in a timely manner;
- b. Have been reviewed and certified by the agency by no later than 60 days after being filed, in accordance with 5 U.S.C. app., § 106(a)(1), 5

²Notwithstanding the August 1 deadline, OGE prefers, for the sake of the efficiency of its report review process, that agencies forward copies of annual PAS reports to OGE for review as soon as the agencies have reviewed and certified the reports.

C.F.R. § 2634.605, the written agency procedures, and, as appropriate, the supplemental agency regulations;

c. Are complete and accurate, in accordance with 5 U.S.C. app., § 102, subpart C of 5 C.F.R. part 2634, the SF 278 instructions, the written agency procedures, and, as appropriate, the supplemental agency regulations; and

d. Reveal no actual or potential violations of the substantive restrictions in II. below.

Note: A report which has not been certified by an agency reviewing official or by OGE by the 61st day after being filed pending the receipt of requested additional information generally will be considered to have been reviewed within the 60-day period.

B. Confidential financial disclosure system (excluding SGEs addressed in I.P. below).

Note: Where the administration of the confidential reporting system has been delegated by an agency's central ethics office, the steps which follow shall apply to each administrative unit whose system is being reviewed.

1. Obtain the written procedures the agency has established, pursuant to 5 U.S.C. app.,

§ 402(d)(1), for collecting, reviewing, and evaluating confidential financial disclosure reports (OGE Form 450).

2. Through a review of the procedures and discussions with ethics officials, determine whether or not the procedures conform with all applicable statutes, regulations, and executive orders.
3. Through discussions with ethics officials, determine whether or not the agency allows the filing of confidential certificates of no new interests (OGE Optional Form 450-A) in accordance with 5 C.F.R. § 2634.905(d).
4. Determine whether or not the agency has established supplemental confidential financial disclosure reporting requirements. If so, determine whether or not:
 - a. Supplemental agency regulations have been approved by OGE in accordance with 5 C.F.R. § 2634.103; or
 - b. If supplemental agency regulations have not been approved by OGE, supplemental confidential reporting forms and requirements have been approved by OGE in accordance with 5 C.F.R. §§ 2634.601(b) and 2634.901(b).
5. As appropriate, obtain copies of the agency's supplemental regulations and reporting forms.

6. Determine whether or not the agency is using an electronic OGE Form 450 or OGE Optional Form 450-A and, if so

OGE Form 450

- a. Determine whether it is a non-fillable, fillable, or "smart" fillable version of the OGE Form 450; and
- b. Review the electronic OGE Form 450 to ensure that:
 - (1) It precisely duplicates (to the extent technically possible) the original OGE Form 450;
 - (2) It represents the most recent edition, or allowable previous edition, of the OGE Form 450;
 - (3) If it varies from the original OGE Form 450 (e.g., continuation pages not included in the original form, etc.), it has been approved by OGE; and
 - (4) If it is a "smart" fillable version, it has been approved by OGE and OMB³ and the series of questions or prompts are complete, accurate, and logical.

³See footnote 1.

OGE Optional Form 450-A

- a. Ensure that it precisely duplicates (to the extent technically possible) the original OGE Optional Form 450
- b. Ensure that it represents the most recent edition, or allowable previous edition, of the OGE Optional Form 450-A; and
- c. If it varies from the original OGE Optional Form 450-A, it has been approved by OGE.

Note: Likewise, where non-electronically-generated OGE Form 450s or OGE Optional Form 450-As are being used, ensure that they are the most recent edition, or allowable previous edition, of the form and, where apparent copies of an original OGE Form 450 or OGE Optional Form 450-A are being used, ensure that they precisely duplicate the original form, as applicable.

- 7. Through discussions with ethics officials, determine whether or not the agency has excluded any individuals or class of individuals from all or a portion of the confidential reporting requirements through the use of an alternative reporting procedure which has been approved by OGE in accordance with 5 C.F.R. § 2634.905(c).

8. As appropriate, obtain a copy of the agency's alternative reporting procedure and the certification being used.

Note: If you find that the agency has an alternative reporting procedure, discuss with the Assistant to the Associate Director or the Associate Director, Program Reviews the appropriate review steps to be followed.

9. Discuss with ethics and program officials the sufficiency of coverage or possible overcoverage of positions whose incumbents are required to file OGE Form 450s and, as appropriate, OGE Optional Form 450-As in accordance with 5 C.F.R. §§ 2634.904 and 2634.905(d).
10. Obtain a master list of individuals required to file OGE Form 450s and, as appropriate, OGE Optional Form 450-As and supplemental confidential reports during the previous calendar year. If there is doubt as to the completeness or accuracy of the list, independently verify its completeness or accuracy (e.g., with the personnel or payroll office, against an agency directory, etc.).
11. Through a review of the master list and discussions with ethics officials, determine whether or not reports generally have been filed as required in accordance with 5 C.F.R. § 2634.903 and the written

agency procedures, and, as appropriate, 5 C.F.R. § 2634.905(d) and the supplemental agency regulations (by no later than October 31 for annual filers or, except for OGE Optional Form 450-A filers who can only file annually, 30 days after entering a covered position).

12. Through discussions with ethics officials and others involved in the development of the master list, determine what mechanisms, if any, are in place to identify individuals within 30 days of their entering a covered position and to provide those individuals with the required confidential reporting form.

13. Using the master list, select a judgmental sample of:

- a. 20% of the OGE Form 450s and, as appropriate:
 - (1) 20% of the OGE Optional Form 450s; and
 - (2) All of the supplemental confidential reports which correspond to the OGE Form 450s selected

or

- b. 50 OGE Form 450s and, as appropriate:
 - (1) 50 OGE Optional Form 450-As; and
 - (2) All of the supplemental confidential reports which correspond to the OGE Form 450s selected,

whichever is greater.

Note: If an agency has less than 50 OGE Form 450s (or less than 50 OGE Optional Form 450-As) which were required to be filed during the previous calendar year, all of the OGE Form 450s (and/or Optional Form 450-As) must be reviewed. Moreover, when 20% of the universe exceeds the number necessary to determine a consistent pattern, the Assistant to the Associate Director or the Associate Director, Program Reviews can authorize an adjustment in the number of reports to be reviewed.

14. Through discussions with ethics officials, determine the status of any OGE Form 450s and Optional Form 450-As which could not be obtained.
15. Review the OGE Form 450s and, as appropriate, the supplemental confidential reports which have been obtained, using the list of contractors, etc. obtained in I.A.13. above, if available, to ensure that the reports:
 - a. Have been filed in a timely manner;
 - b. As appropriate, have been reviewed by the agency in a timely manner; or by no later than 60 days after being filed, in accordance with 5 C.F.R. § 2634.605, the written agency procedures, and, as appropriate, the supplemental agency regulations;

Note: A report which has not been signed by a reviewing official by the 61st day after being filed pending the receipt of requested additional information generally will be considered to have been reviewed within the 60-day period.

- c. Are complete and accurate in accordance with 5 C.F.R. § 2634.907(a), the OGE Form 450 instructions, the written agency procedures, and, as appropriate, the supplemental agency regulations; and
- d. Reveal no actual or potential violations of the substantive restrictions in II. below.

16. Review the OGE Optional Form 450-As which have been obtained to ensure that:

- a. They have been treated as a confidential document, in accordance with 5 C.F.R. §§ 2634.604(b) and 2634.901(d);
- b. They have only been filed by regular employee annual filers (not new entrants or SGEs);
- c. They have been completed and signed by the filers;
- d. They have been filed in a timely manner; and
- e. An OGE Form 450 has been filed within the preceding three years or, if use of the OGE Optional Form 450-A has been limited by the

agency, within the preceding one or two year(s).⁴

C. Ethics agreements.

1. Identify all of the ethics agreements associated with the financial disclosure reports reviewed in I.A. and B. above.
2. Through discussions with ethics officials and a review of pertinent documents, ensure that:
 - a. The actions necessary to comply with the ethics agreements (i.e., waivers, disqualifications (recusals), divestitures, resignations from non-Federal positions, reassignments, and blind trusts) have been taken within three months from the date of each ethics agreement, in accordance with 5 C.F.R. § 2634.802(b);

Note: In the absence of any such agreements to review, determine whether or not the agency has a process for ensuring that the three-month deadline can be met.

⁴To ensure the currency of reported information in order to prevent and detect conflicts of interest, filers may only use the OGE Optional Form 450-A for a maximum of three consecutive years before being required to file another OGE Form 450 in the fourth year. However, agencies may choose to further limit use of the OGE Optional Form 450-A to two consecutive years or even one year before another OGE Form 450 is required.

- b. Where an ethics agreement has been made with someone other than the DAEO, the individual involved has promptly apprised the DAEO of the ethics agreement, in accordance with 5 C.F.R. § 2634.803(d); and
- c. Where an ethics agreement has been made by an individual, other than a nominee to or incumbent in a PAS position, the individual involved has promptly sent evidence of action taken under 5 C.F.R. § 2634.804(b) to the DAEO, in accordance with 5 C.F.R. § 2634.804(a)(3).

Note: Where the ethics program at one or more components of a department or agency is being reviewed, I.C.3. and 4. below need only be applied to the components under review.

- 3. Obtain from the agency and from OGE's Office of General Counsel and Legal Policy copies of all of the 18 U.S.C. § 208(b)(1) waivers which were granted during the previous calendar year.
- 4. Through discussions with ethics officials and a review of the waivers, ensure that:
 - a. There is not a pattern of noncompliance with 5 C.F.R. § 2640.301;
 - b. Where practicable, the agency has consulted formally or informally with OGE prior to

granting the waiver, in accordance with 5 C.F.R. §§ 2640.303 and 2635.402(d)(4);

- c. A copy of each waiver has been forwarded by the agency to OGE, in accordance with 5 C.F.R. §§ 2640.303 and 2635.402(d)(4);
- d. The waivers are maintained for public inspection, in accordance with 18 U.S.C. § 208(d)(1) and 5 C.F.R. § 2640.304;
- e. If any waivers have been granted in regard to employees serving on boards of directors of non-Federal nonprofit entities in their official capacity, assessments were made by the agency as to the propriety of the employees serving in their official capacity, the agency's payment of dues or other expenses, employee participation in fund-raising, or the use of Government resources in fulfilling board responsibilities;⁵ and
- f. The waivers reveal no actual or potential violations of the substantive restrictions in II. below.

- 5. Obtain all of the written notifications of divestiture/resignation and, as required to be in writing by the agency (either informally or by

⁵See OGE DAEOgram #DO-97-027, dated June 11, 1997 and entitled "Waiver consultations under 18 U.S.C. § 208(b)."

agency regulation supplementing 5 C.F.R. part 2635), written disqualifications (recusals) under 5 C.F.R. §§ 2635.402(c), 2635.502(e), and 2635.604(a) associated with the ethics agreements identified in I.C.1. above.

6. Through discussions with ethics officials and a review of the notifications and disqualifications, ensure that:

- a. The written notifications of divestiture/resignation are in accordance with the ethics agreements;
- b. The disqualifications have been devised in accordance with 5 C.F.R. § 2634.804(b)(1). In particular, ensure that each disqualification lists and describes the specific matters or subjects to which the disqualification applies, a statement of the method by which the agency will enforce the disqualification, and a list of the positions of those agency employees involved in the enforcement (i.e., the individual's immediate subordinates and supervisors); and
- c. They reveal no actual or potential violations of the substantive restrictions in II. below.

Note: If not enough notifications or disqualifications are obtained to make a sufficient assessment here

or pursuant to II. below, obtain and review any additional notifications or disqualifications granted or executed during the preceding calendar year and, as necessary, the next preceding calendar year.

D. Written exemptions from subpart B of 5 C.F.R. part 2635, pursuant to 5 C.F.R. § 2635.104(c), for employees detailed to non-Federal entities.

1. Obtain all written exemptions from the restrictions of subpart B which were issued during the previous calendar year.
2. Through discussions with ethics officials and a review of the exemptions, ensure that such exemptions have been granted in accordance with 5 C.F.R. § 2635.104(c).

E. Written determinations allowing the acceptance of gifts with a value in excess of \$200 or cash or an investment interest for meritorious public service, or an honorary degree from an institution of higher education, pursuant to 5 C.F.R. § 2635.204(d).

1. Obtain all written determinations approving the acceptance of such gifts and honorary degrees which were issued during the previous calendar year.

2. Through discussions with ethics officials and a review of the determinations, ensure that such determinations:
 - a. Have been made in accordance with 5 C.F.R. § 2635.204(d)(1) for gifts with a value in excess of \$200 or cash or an investment interest, or § 2635.204(d)(2) for honorary degrees; and
 - b. Reveal no actual or potential violations of the substantive restrictions in II. below.

F. Written determinations of agency interest in authorizing employees to attend widely attended gatherings of mutual interest to the agency and others, as well as written authorizations for accompanying spouses at these and other events, pursuant to 5 C.F.R. § 2635.204(g).

1. Obtain all written determinations of agency interest in employees' attendance at widely attended gatherings which were issued during the previous calendar year.
2. Obtain all written authorizations for employees to accept an invitation from a sponsor or nonsponsor, subject to appropriate limitations, for an accompanying spouse or other guest to participate in all or part of an event at which the employee's

participation is as a speaker or at a widely attended gathering.

3. Through discussions with ethics officials and a review of the determinations/authorizations, ensure that such determinations/authorizations:
 - a. Have been made in accordance with 5 C.F.R. § 2635.204(g)(3) for employees, or § 2635.204(g)(6) for accompanying spouses or other guests; and
 - b. Reveal no actual or potential violations of the substantive restrictions in II. below.

G. Written authorizations for employees to participate in particular matters involving specific parties which raise the question of impartiality in the mind of a reasonable person, pursuant to 5 C.F.R. § 2635.502(d).

1. Obtain all written authorizations for employees to participate in particular matters involving specific parties, which raise the question of impartiality, which were issued during the previous calendar year.
2. Through discussions with ethics officials and a review of the authorizations, ensure that such authorizations:
 - a. Have been made in accordance with 5 C.F.R. § 2635.502(d); and

- b. Reveal no actual or potential violations of the substantive restrictions in II. below.

H. Written waivers of the disqualification requirement related to extraordinary payments from former employers, pursuant to 5 C.F.R. 2635.503(c).

- 1. Obtain all written waivers of the disqualification requirement related to extraordinary payments from former employers which were issued during the previous calendar year; and
- 2. Through discussions with ethics officials and a review of the waivers, ensure that such waivers:
 - a. Have been made in accordance with 5 C.F.R. § 2635.503(c); and
 - b. Reveal no actual or potential violations of the substantive restrictions in II. below.

I. Written authorizations permitting an employee to participate in a particular matter affecting the financial interest of a prospective employer with whom the employee seeks employment and where a reasonable person would be likely to question the employee's impartiality, pursuant to 5 C.F.R. § 2635.605(b).

- 1. Obtain all written authorizations permitting employees to participate in particular matters affecting the financial interests of prospective

employers, raising questions of impartiality, which were issued during the previous calendar year.

2. Through discussions with ethics officials and a review of the authorizations, ensure that such authorizations:

a. Have been made in accordance with 5 C.F.R. §§ 2635.605(b) and 2635.502(d); and

b. Reveal no actual or potential violations of the substantive restrictions in II. below.

J. Advance authorization for employees to engage in certain outside employment and activities, as required by the agency pursuant to 5 C.F.R. § 2635.803.

1. Obtain all of the written authorizations to engage in such outside employment and activities associated with the financial disclosure reports reviewed in I.A. and B. above.

2. Through discussions with ethics officials and a review of the authorizations, ensure that such outside employment and activities:

a. Have been authorized in advance according to 5 C.F.R. § 2635.803 and any agency regulation supplementing 5 C.F.R. part 2635; and

b. Reveal no actual or potential violations of the substantive restrictions in II. below.

Note: If not enough written authorizations are obtained to make a sufficient assessment here or pursuant to II. below, obtain and review any additional authorizations granted during the preceding calendar year and, as necessary, the next preceding calendar year and other years.

K. Advance written authorization to engage in teaching for compensation by covered noncareer employees at levels above GS-15, pursuant to 5 U.S.C. app., § 502(a)(5) as implemented by 5 C.F.R. § 2636.307.

1. Obtain all of the written authorizations to engage in such teaching by noncareer employees at levels above GS-15 (along with the corresponding written requests) which were issued during the previous calendar year.
2. Through discussions with ethics officials and a review of the authorizations, ensure that such teaching:
 - a. Has been authorized in accordance with 5 C.F.R. § 2636.307; and
 - b. Reveals no actual or potential violations of the substantive restrictions in II. below.

L. Written advice/counseling.

1. Timely select (or have the agency provide) a sufficient judgmental sample of written advice/counseling issued during the previous calendar year and up to the date of the review, addressing various ethics matters (e.g., gifts, invitations, conflicts of interest, outside employment, seeking employment, post-employment, etc.) to make an assessment pursuant to I.L.2. and 3. below.
2. Through discussions with ethics officials, a review of the advice/counseling rendered, and any additional factual information provided, ensure that:
 - a. A counseling program for agency employees concerning all ethics and standards of conduct matters, including post-employment matters, has been developed and conducted in accordance with 5 C.F.R. § 2638.203(b)(7);
 - b. Records have been kept, where appropriate, on advice rendered in accordance with 5 C.F.R. § 2638.203(b)(8);
 - c. Advice/counseling in the form of written opinions issued by the DAEO concerning the application of 18 U.S.C. § 202-209 have been

transmitted to OGE in accordance with 5 C.F.R.
§ 2638.313; and

d. The advice/counseling accurately and completely applies the substantive restrictions in II. below to the facts.

3. In assessing the accuracy and completeness of the advice/counseling in I.L.2.d. above, provide copies of the advice/counseling to the Program Services Division Desk Officer, to whom the department or agency is assigned, who:

a. Assesses whether the advice/counseling accurately and completely applies the substantive restrictions in II below to the facts, such that there is no:

(1) Routine misapplication or neglect in applying one or more statutory/regulatory provisions; or

(2) Misapplication or neglect in applying one or more statutory/regulatory provisions in one instance, although of such magnitude as to bring into question the completeness and accuracy of the advice/counseling in general;

b. Discusses his or her assessment with the Associate Director for Program Services and the PRD Team Leader;

- c. As necessary, contacts the agency to obtain additional information, answers, etc., including, as practicable, the Team Leader in any discussions;
- d. As necessary, contacts OGE's Office of General Counsel and Legal Policy for assistance, advising the Associate Directors for Program Review and Program Services and including, as practicable, the Team Leader in any discussions; and
- e. Timely discusses any findings with the Team Leader concerning the completeness and accuracy of the advice/counseling and report in writing to the Team Leader his or her conclusion as to whether or not the advice/counseling is accurate and complete.

M. Acceptance of travel and related expenses from non-Federal sources, pursuant to 31 U.S.C. § 1353.

- 1. Obtain from OGE's Education and Program Services Division, for the agency being reviewed, a copy of the most recent semiannual report to OGE of payments for travel and related expenses accepted from non-Federal sources pursuant to 31 U.S.C. § 1353.

2. Using the semiannual report as a basis for discussions with the OGE Desk Officer to whom the department or agency is assigned, determine:
 - a. The Desk Officer's understanding of the agency's process for authorizing such travel and related expenses and compiling the semiannual report;
 - b. Whether the Desk Officer identified any problems on the semiannual report; and
 - c. Whether the Desk Officer identified any problems the agency experienced in compiling the semiannual report.
3. Through discussions with ethics officials or other appropriate officials at the agency, review the agency's process for compiling the semiannual report by determining:
 - a. Who is responsible for collecting the information to be reported, drafting the semiannual report, and forwarding the report to OGE; and
 - b. Whether an ethics official reviews the semiannual report before it is submitted to OGE.
4. Determine whether or not the agency has any written procedures implementing 41 C.F.R. part 304-1. If

so, determine whether the procedures are in compliance with part 304-1.

5. Select a judgmental sample of 20% of the written authorizations to accept travel and related expenses which were issued during the previous calendar year, or 50 written authorizations, whichever is greater. When 20% of the universe exceeds the number necessary to determine a consistent pattern, the assistant to the Associate Director or the Associate Director, Program Reviews can authorize an adjustment in the number of authorizations to be reviewed.

NOTE: If an agency has less than 50 written authorizations during the previous calendar year, all of the authorizations must be reviewed. Also, the judgmental sample may include authorizations for payments which were identified on the semiannual report. Finally, where the universe cannot be identified with sufficient confidence, payments for the previous calendar year found on the semiannual reports may be used as the basis for selecting the judgmental sample of authorizations.

6. If written authorizations are not required, through discussions with ethics officials or other agency officials, determine how authorizations to accept

travel and related expenses occur in the absence of documentation.

7. Review the written authorizations which have been obtained to ensure that each authorization:
 - a. Has been authorized by officials at as high an administrative level as practical, in accordance with 41 C.F.R. § 304-1.3(c), and coordinated with ethics officials, as appropriate;
 - b. Is for a meeting or similar function which the employee has been authorized to attend in an official capacity on behalf of the agency, in accordance with 41 C.F.R. §§ 304-1.3(a), 304-1.2(c)(3), and 304-1.4;
 - c. Is for travel and related expenses which have been accepted from a non-Federal source which is not disqualified on the basis of a conflict of interest analysis made in accordance with 41 C.F.R. § 304-1.5;
 - d. Has been for payment in kind or by check or similar instrument, in accordance with 41 C.F.R. §§ 304-1.2(c)(5) and 304-1.6;
 - e. If for an accompanying spouse, has been approved in accordance with 41 C.F.R. § 304-1.3(b);

- f. If in excess of \$250, the payment related to such authorization has been reported to OGE (or, if prior to the reporting deadline, will be reported to OGE) in accordance with 41 C.F.R. § 304-1.9; and
- g. Reveals no actual or potential violations of the substantive restrictions in II below.

N. Acceptance of travel and related expenses from 26 U.S.C. § 501(c)(3) organizations (and others to which the prohibitions of 18 U.S.C. § 209 do not apply), pursuant to 5 U.S.C. § 4111.

- 1. Obtain all of the written authorizations to accept such travel associated with the financial disclosure reports reviewed in I.A. and B. above.
- 2. Through discussions with ethics officials and a review of the authorizations, ensure that such travel:
 - a. Has been authorized by the agency head or his or her designee, in accordance with 5 C.F.R. § 410.502;
 - b. Moreover, has been authorized in writing, for which records have been maintained, in accordance with 5 C.F.R. §§ 410.501 et seq; and

- c. Reveals no actual or potential violations of the substantive restrictions in II. below.

Note: If not enough written authorizations are obtained to make a sufficient assessment here or pursuant to II. below, obtain and review any additional authorizations granted during the preceding calendar year and, as necessary, the next preceding calendar year and other years.

O. Education and training conducted pursuant to subpart G of 5 C.F.R. part 2638.

1. Through discussions with ethics officials, determine whether a written plan for the annual ethics training program for the current calendar year was developed by the beginning of the year, in accordance with 5 C.F.R. § 2638.706(a) and (b).
2. Obtain a copy of the written plan to ensure that it includes:
 - a. A brief description of the agency's annual training, in accordance with § 2638.706©(1);
 - b. Estimates of the number of employees who will receive verbal training, in accordance with § 2638.706©(2);
 - c. An estimate of the number of employees who will receive written training, in accordance with § 2638.706(c)(3); and

- d. Estimates of the number of employees who will receive written training, instead of verbal training, under certain exceptions in subpart G, in accordance with § 2638.706©(4).
3. Through discussions with ethics officials, a review of any pertinent documents (including any written certifications by employees or ethics officials), and, as appropriate, monitoring one or more sessions, review the initial ethics orientation required by 5 C.F.R. § 2638.703 to ensure that, within 90 days of beginning work at an agency, each new employee is given:
- a. 5 C.F.R. part 2635 and any agency supplemental standards of conduct regulation to keep or review, in accordance with § 2638.703(a)(1) or summaries of part 2635, any supplemental standards, and part I of Executive Order 12674, as modified by Executive Order 12731, to keep, in accordance with § 2638.703(a)(2);
 - b. The names, titles, office addresses, and telephone numbers of the DAEO and other agency officials available to advise the employees on ethics issues, in accordance with § 2638.703(b);
 - c. One hour to review the items described in I.O.3.a. and b. above; and

- d. In the case of PAS employees, who were appointed during the current and preceding three years, from an ethics official, in person and one-on-one, the initial ethics orientation required by 5 C.F.R. § 2638.703 and outlined in I.O.3.a., b. and c. above.
- 4. Through discussions with ethics officials, a review of any pertinent documents (including any written certifications by employees or ethics officials), and, as appropriate, monitoring one or more sessions, review the annual verbal ethics training required by 5 C.F.R. § 2638.704 to ensure that:
 - a. Each calendar year, verbal training is given to employees who are required to file public financial disclosure reports, in accordance with § 2638.704(a);
 - b. The verbal training includes, as a minimum, part I of Executive Order 12674, as modified, 5 C.F.R. part 2635, any agency supplemental standards, the Federal conflict of interest statutes, and the names, titles, office addresses, and telephone numbers of the DAEO and other agency ethics officials available to advise the employees on ethics issues, in accordance with § 2638.704(b);

- c. Employees are given a minimum of one hour of official duty time for the verbal training, either presented by a qualified instructor or prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape, in accordance with § 2638.704(c);
 - d. The qualified instructor is available during and immediately after the verbal training, in accordance with § 2638.704(d); and
 - e. Any exceptions to the verbal training requirement are in accordance with § 2638.704(e).
 - f. PAS employees, who were appointed during the current and preceding three years, are given, from an ethics official, in person and one-on-one, annual ethics training required by 5 C.F.R. § 2638.704 and outlined in I.O.4.a. through e. above.
5. Through discussions with ethics officials and a review of any pertinent documents, review the annual ethics training required by 5 C.F.R. § 2638.705 to ensure that:
- a. Each calendar year, training is given to certain employees other than public filers, in accordance with § 2638.705(a);

- b. The content of the training is in accordance with § 2638.705(b) (which refers to § 2638.704(b) cited in I.O.4.b. above);
- c. Employees are given a minimum of one hour of official duty time for verbal training at least once every three years, in accordance with § 2638.705(c)(1);
- d. Employees are given an amount of official duty time the agency determines is sufficient for written training in the years in which the employees do not receive verbal training, in accordance with § 2638.705(c)(2);
- e. Any exceptions to the verbal training requirement are in accordance with § 2638.705(d); and
- f. There is a means of verifying the type of annual ethics training each employee receives (i.e., verbal or written) and such information covering at least the prior two calendar years can be retrieved.

P. Special Government employees (SGEs).

- 1. Through discussions with ethics officials and a review of pertinent documents:
 - a. Identify the types of individuals who serve the agency for 130 days or less during any

period of 365 days (i.e., serve temporarily on either a full-time, intermittent, or part-time basis);

- b. Identify any committees, councils, commissions, etc. which advise the agency and are comprised of individuals identified in I.P.1.a. above; and

Note: A pertinent Web site to review, in this regard, would be the GSA's Home Page, located at <http://policyworks.gov/org/main/mc/index-r.htm>.

- c. Ensure that a determination was made as to whether these types of individuals are SGEs in accordance with 18 U.S.C. § 202(a) and OGE Informal Advisory Memorandum 82x22.

- 2. Through discussions with ethics officials and a review of pertinent documents, for the previous calendar year:

- a. Identify all SGE's who served as members of advisory committees, as experts/consultants, or in other capacities; and
- b. Ensure that a determination was made as to whether each SGE was required to file a financial disclosure report⁶ in accordance

⁶If the agency is using electronic financial disclosure for SGEs which has not been reviewed at I.B.6. (excluding the OGE Optional Form 450-A) and/or I.A.5. above, either because none is being used for regular employees or it is not the same, those

with, as appropriate, 5 C.F.R. §§ 2634.903 and 2634.904 (for confidential filers) and §§ 2634.201 and 2634.202 (for public filers).

3. Obtain the master list(s) of SGEs required to file public and confidential financial disclosure reports during the previous calendar year.
4. Through a review of the master list(s) and discussions with ethics officials, determine whether or not reports generally have been filed as required in a timely manner in accordance with 5 C.F.R. § 2634.903 (for confidential filers) and 5 C.F.R. § 2634.201 (for public filers).
5. Obtain all of the financial disclosure reports or a sufficient judgmental sample of the reports to make an assessment pursuant to I.P.7. below.
6. Through discussions with ethics officials, determine the status of any reports that could not be obtained.
7. Review the reports which have been obtained, using the list of contractors, etc. obtained in I.A.13. above, if available, to ensure that the reports:
 - a. Have been filed in a timely manner;
 - b. Have been reviewed by the agency:

- (1) For confidential filers, by no later than 60 days after being filed, in accordance

review steps should be followed, as applicable.

with 5 C.F.R. § 2634.605 and the written agency procedures; or

- (2) For public filers, by no later than 60 days after being filed, in accordance with 5 U.S.C. app., § 106(a)(1), 5 C.F.R. § 2634.605, and the written agency procedures;

c. Are complete and accurate in accordance with:

- (1) For confidential filers, 5 C.F.R. § 2634.907(a) and the OGE Form 450 instructions; or

- (2) For public filers, 5 U.S.C. app., § 102, subpart C of 5 C.F.R. part 2634, and the SF 278 instructions; and

d. Reveal no actual or potential violations of the substantive restrictions described in II. below.

Note: Where the ethics program at one or more components of a department or agency is being reviewed, I.P.8. and 9. below need only be applied to the components under review.

- 8. Obtain from the agency and from OGE's Office of General Counsel copies of all of the 18 U.S.C. § 208(b)(3) waivers which were granted during the previous calendar year.

9. Through discussions with ethics officials and a review of the waivers, ensure that:
 - a. There is not a pattern of noncompliance with 5 C.F.R. § 2640.302;
 - b. Where practicable, the agency has consulted formally or informally with OGE prior to granting the waiver, in accordance with 5 C.F.R. §§ 2640.303 and 2635.402(d)(4);
 - c. A copy of each waiver has been forwarded by the agency to OGE, in accordance with 5 C.F.R. 2640.303 and 2635.402(d)(4);
 - d. The waivers are maintained for public inspection, in accordance with 18 U.S.C. § 208(d)(1) and 5 C.F.R. § 2640.304; and
 - e. The waivers reveal no actual or potential violations of the substantive restrictions in II. below.
10. Obtain, as required to be in writing by the agency (either informally or by agency regulation supplementing 5 C.F.R. part 2635), all written disqualifications under 5 C.F.R. §§ 2635.402(c), 2635.502(e), and 2635.604(a) associated with the financial disclosure reports reviewed in I.P.7. above.
11. Through discussions with ethics officials and a review of the disqualifications, ensure that:

- a. The disqualifications have been devised in accordance with 5 C.F.R. § 2634.804(b)(1). In particular, ensure that each disqualification lists and describes the specific matters or subjects to which the disqualification applies, a statement of the method by which the agency will enforce the disqualification, and a list of the positions of those agency employees involved in the enforcement (i.e., the individual's immediate subordinates and supervisors); and
- b. They reveal no actual or potential violations of the substantive restrictions in II. below.

Note: If not enough disqualifications are obtained to make a sufficient assessment here or pursuant to II. below, obtain and review any additional waivers or disqualifications granted or executed during the preceding calendar year and, as necessary, the next preceding calendar year and other years.

12. Counseling and education and training.

Following basically I.L. and O. above, ensure that the counseling and education and training of SGEs comply with 5 C.F.R. §§ 2638.203(b)(7) and (8), 2638.313, 2638.703, and 2638.704.

Q. Agency reports to OGE, pursuant to 5 U.S.C. app., § 402(e)(2), of referrals of violations of criminal conflict of interest statutes to the Department of Justice in accordance with 28 U.S.C. § 535.

1. Through discussions with appropriate officials and a review of any pertinent documents, ensure that OGE is concurrently notified of all referrals of violations of criminal conflict of interest statutes (18 U.S.C. §§ 203, 205, 207, 208, and 209) to the Department of Justice, in accordance with 5 C.F.R. § 2638.603(b), by determining:

- a. The identity of the organizational unit(s) at the agency that are making referrals to the Attorney General (e.g., the office of the IG, DAEO's office, etc.);
- b. The identity of the organizational unit(s) at the agency that are notifying OGE of the referrals;
- c. Whether the organizational unit(s) responsible for these actions are aware of the requirement to notify OGE of such referrals;
- d. Whether the organizational unit(s) which notify OGE of the referrals use the "Notification of Conflict of Interest Referral" form (OGE Form 202); and

- e. If more than one organizational unit is involved in either making the referral to the Department of Justice or concurrently notifying OGE, whether the agency has considered having only one unit responsible for each requirement or both requirements.
2. Through discussions with appropriate officials and a review of any pertinent documents, ensure that the disposition of any such referrals (e.g., indictment, information filed, prosecution declined, disciplinary or corrective action initiated, etc.) has been promptly reported to OGE in accordance with 5 C.F.R. § 2638.603(c).

R. Acceptance of gifts under a separate department or agency gift acceptance authority.

1. Determine whether the department or agency has a separate gift acceptance authority and, if so, obtain copies of the authorizing statute and any implementing regulation and internal policy.
2. Determine whether there is a limit on which employees, on behalf of the department or agency, can utilize the gift acceptance authority.
3. Determine whether or not the statute or any implementing regulation or internal policy

prohibits employees, on behalf of the department or agency, from:

- a. Soliciting gifts generally; or
- b. Accepting gifts from prohibited sources which raise real or apparent conflicts of interest.

4. Determine whether the department or agency maintains a record of the authorizations/acceptances of such gifts and, if so, select a sufficient judgmental sample of the authorizations/acceptances for the previous calendar year to make the determinations in I.R.5. below.

5. Through discussions with ethics officials and a review of the authorizations/acceptances, determine whether such gifts:

- a. Have been solicited in violation of the authorizing statute or any implementing regulation or internal policy (or, in the absence of any such prohibition, in violation of 41 C.F.R. § 304-1.2(b));
- b. Have been accepted from a prohibited source which raises a real or apparent conflict of interest in violation of the authorizing statute or any regulation or internal policy (or, in the absence of any such prohibition,

in violation of the substantive restrictions in II. below);

- c. Could have been accepted under 31 U.S.C. § 1353; and
- d. Have otherwise been accepted in accordance with the authorizing statute and any implementing regulation and internal policy.

S. Agency services to boards or commissions

- 1. Determine whether the agency is supplying ethics services (i.e., collecting and reviewing financial disclosure reports, providing education and training/advice and counseling) to any board or commission not organizationally a part of the agency.
- 2. If an agency is providing such services to any board or commission, discuss with the Deputy Director, OAP and the Associate Director, Program Reviews to determine whether or not to conduct a separate ethics program review of that board or commission.

II. Compliance with Substantive Restrictions.

Through a review of the reports and documents in I. above and discussions with ethics officials, assess whether or not there are any actual or potential violations of the substantive

restrictions contained in the following statutes, regulations, and executive order, regardless of whether or not they have already been identified by the agency:

A. Criminal conflict of interest statutes.

1. 18 U.S.C. § 203
2. 18 U.S.C. § 205
3. 18 U.S.C. § 207
4. 18 U.S.C. § 208
5. 18 U.S.C. § 209

B. Other statutes.

1. 5 U.S.C. § 4111 (Acceptance of contributions, awards, and other payments from 26 U.S.C. § 501(c)(3) organizations)
2. 5 U.S.C. § 7351 (Gifts to superiors)
3. 5 U.S.C. § 7353 (Gifts to Federal employees)
4. 5 U.S.C. app., §§ 501 et seq. (Government-wide limitations on outside earned income and employment) (except §§ 501(b) and 505(3)).
5. 31 U.S.C. § 1353 (Acceptance of travel and related expenses from non-Federal sources)
6. Ethics-related agency-specific statutes

C. Executive orders.

1. Part I of Executive Order 12674, as modified by Executive Order 12731
2. Executive Order 12834

D. Regulations.

1. 5 C.F.R. part 2635 (Standards of ethical conduct for employees of the executive branch)
2. 5 C.F.R. part 2636 (Limitations on outside employment and prohibition of honoraria) (except subpart b)
3. 5 C.F.R. part 2637 (Regulations concerning post-employment conflict of interest)⁷
4. 5 C.F.R. part 2639 (Interpretation of 18 U.S.C. § 209)⁸
5. 5 C.F.R. part 2640 (Interpretation of 18 U.S.C. § 208)
6. 5 C.F.R. part 2641 (Regulations concerning post-employment conflict of interest)⁹

⁷Except where an underlying statutory provision has been changed by revised 18 U.S.C. § 207 contained in the Ethics Reform Act of 1989, part 2637 remains persuasive concerning the interpretation of revised § 207.

⁸Part 2639 of 5 C.F.R. has not been published in the Federal Register.

⁹Part 2641 of 5 C.F.R., implementing revised 18 U.S.C. § 207 contained in the Ethics Reform Act of 1989, has not been published completely in the Federal Register.

7. 41 C.F.R. part 304-1 (Federal travel regulation; acceptance of payment from a non-Federal source for travel expenses)
8. Agency supplementary regulation prepared as an addendum to 5 C.F.R. part 2635

III. Enforcement of Requirements and Restrictions.

A. Procedural requirements.

Through discussions with ethics officials and a review of the reports and documents in I. above and any other pertinent documents, ensure that:

1. The agency has referred or is intending to refer for criminal prosecution any violations of 18 U.S.C. § 1001 (Fraud and False Statements--Statements or entries generally) in accordance with 28 U.S.C. § 535;
2. The agency has referred or is intending to refer for civil prosecution to the Department of Justice in accordance with 5 U.S.C. app., § 104(b) any knowing and willful falsification or any knowing and willful failure to file a report pursuant to section 102;
3. The agency has assessed or is intending to assess a filing fee of \$200 in accordance with 5 U.S.C. app., § 104(d) and 5 C.F.R. § 2634.704 against any

individual who has filed a public report more than 30 days after the report is required pursuant to section 101; and

4. The agency has or is intending to take prompt and effective administrative action related to any violation of the procedural requirements in I. above in accordance with 5 C.F.R. § 2638.203(b)(9). Such administrative action may be either in lieu of or in addition to any other action taken by statute in III.A.1. through 3. above.

B. Substantive restrictions.

Through discussions with ethics officials and a review of the reports and documents in I. above and any other pertinent documents, ensure that:

1. The agency has referred or is intending to refer for criminal prosecution any violations of the criminal conflict of interest statutes in II.A. above to the Department of Justice in accordance with 28 U.S.C. § 535;
2. The agency has referred or is intending to refer for civil prosecution or injunctive relief any violations of the criminal conflict of interest statutes in II.A. above to the Department of Justice in accordance with 18 U.S.C. § 216;

3. Violators of any of the other statutes in II.B. above have been or will be subject to any penalties, etc. called for by statute; and
4. The agency has or is intending to take prompt and effective action--either in the form of disciplinary and/or corrective action--related to the violations in II. above in accordance with 5 C.F.R. § 2638.203(b)(9). Such administrative action may be either in lieu of or in addition to any other action taken by statute in III.B.1. through 3. above.

IV. Overall Assessment of the Ethics Program.

- A. Through discussions with ethics officials, determine how many employees at the agency worked in the ethics program during the previous calendar year on either a full-time or part-time basis.
- B. Through discussions with ethics officials, determine if there has been continuity in the administration of the ethics program over the last few years. For example, what turnover, if any, has occurred in the key ethics official positions over the last few years?
- C. Through discussions with officials assigned to the office of the IG (or officials assigned to a similar office in the absence of an IG), ensure that:

1. Any information developed by the IG is reviewed by the DAEO to determine whether such information discloses a need for taking prompt corrective action to remedy actual or potential conflict of interest situations in accordance with 5 C.F.R. § 2638.203(b)(11); and
 2. The services of the agency's IG are utilized by the DAEO when appropriate, including the referral of matters between the DAEO and the IG, in accordance with 5 C.F.R. § 2638.203(b)(12).
- D. Based on what was found in I., II., III., and IV.A., B., and C. above, assess whether or not the DAEO and Alternate DAEO are effectively coordinating and managing the ethics program in accordance with 5 C.F.R. §§ 2638.203 and 2638.702(a)(1).
- E. If such coordination and management in IV.D. above is less than effective, assess whether or not the agency head was effectively exercising personal leadership in establishing, maintaining, and carrying out the ethics program in accordance with 5 C.F.R. § 2638.202(a) and, as applicable, 41 C.F.R. § 101-6.1009(j).

REPORTING FORMAT

A team leader is to be assigned to all ethics program reviews and shall be responsible for the writing and assembling of the

report. However, all staff members must recognize a high sense of personal responsibility for the quality of their work. Each person who works on an agency review and report, at whatever stage, must accept full responsibility for carrying out his or her functions and for the best results thereof. The person responsible for any part of the work should not release it to the next level until he or she is convinced that it is accurate, complete, factual, and objective, and is willing to stand behind it as the best he or she can do.

The audience for OGE's review reports can include the OGE Director and staff, the agency head, the DAEO, the IG, and, possibly later, Congressional and GAO staffs. The organization of each report should be tailor-made for the information to be reported and for the purpose to be served. OGE reports must be no longer than necessary to communicate our message.

The basic message or central unifying theme should give direction and purpose to everything else in the report. Every word, sentence, paragraph, and section should contribute to the effective communication of the basic message. All conclusions and recommendations must be supported by findings from the review process. While the reporting format may differ depending on the message to be sent, the standard reporting format should be developed as either a letter or chapter report, with letters transmitting the report to the IG, the DAEO (chapter reports only), and the agency head (when corrective action is necessary in accordance with 5 C.F.R. § 2638.402 or at the discretion of the

Director). The Director generally will sign a letter or chapter report and transmittal letters when corrective action is necessary, when an agency has substantial problems that fall just short of requiring corrective action, or at his or her discretion. The Deputy Director, OAP will sign all other reports and transmittal letters. The basic formats for reports and transmittal letters are as follows:

1. A letter report (generally 1-15 pages) to the DAEO should include:
 - an opening paragraph citing OGE's review authority and the organizational elements reviewed;
 - a short section on prior OGE reviews, as appropriate;
 - one or more paragraphs or sections (with subsections, as necessary) summarizing our current review findings;
 - a conclusions and recommendation(s) section (which may consist of two separate sections in longer letter reports); and
 - a closing paragraph advising the DAEO of the necessity to respond to OGE within 60 days concerning actions taken or to be taken on the recommendation(s) and of OGE's six-month follow-up review (or in the case of a report with no formal recommendation, a statement that OGE will not conduct a six-month follow-up review).

2. A chapter report (generally 16 or more pages) to the DAEO, addressing issues of relative seriousness or complexity that cannot be accommodated in a long letter, should include:
 - a chapter citing OGE's review authority and the organizational elements reviewed, OGE's prior reviews (as appropriate), and the objective, scope, and methodology used to conduct the review;
 - a chapter on the administration of the agency's ethics program;
 - a chapter on the public financial disclosure system;
 - a chapter on the confidential financial disclosure system;
 - a chapter on the ethics advice and counseling given by agency ethics counselors;
 - a chapter on the ethics education and training activities of the agency; and
 - a chapter on OGE's findings (summarized), conclusions, and recommendation(s).
3. A transmittal letter to the DAEO or agency head, enclosing a copy of the report sent to the DAEO, should include:
 - an opening paragraph;
 - one or more paragraphs summarizing our review findings and recommendation(s) (more detail should

be provided in the transmittal letter to the DAEO than in the letter to the agency head); and

- a closing paragraph (which in the case of chapter reports will advise the DAEO of the necessity to respond to OGE within 60 days concerning actions taken or to be taken on the recommendation(s) and of OGE's six-month follow-up review).

OGE's reports should be accurate, complete, concise, and objective. OGE's arguments for change should be logical, persuasive, and based on demonstrated need. The demonstrated need may be to comply with a statute, executive order, regulation, procedure, etc., or simply to exercise common sense. The burden of proof is on OGE, not the agency. The tone of OGE's reports should be designed to encourage favorable reaction to its findings and recommendations. Any agency arguments against OGE's recommendations should be set forth in the report. OGE's conclusions and recommendations must follow logically from the facts presented.

All of the prescribed review and report preparation procedures must be applied with the objective of producing reports that contain no errors of fact, logic, or reasoning. One inaccuracy in a report can cast doubt on the validity of an entire report and divert attention from the substance of the report. One's professional reputation and that of OGE is at stake. All factual data, findings, and conclusions in OGE's reports must be adequately supported by enough objective evidence in the working papers to

demonstrate the bases for the recommendations. The team leader is responsible for ensuring that all of the working papers are prepared and maintained completely following each review.

FOLLOW-UP

One of the most important aspects of OGE's work is the completion of the follow-up review and the preparation of the follow-up report. The Assistant to the Associate Director, Program Reviews is responsible for ensuring that:

1. The DAEO responds to OGE's report recommendations within 60 days from the date of the report.
2. A follow-up review six months from the date of the report is conducted to determine whether the agency has taken adequate and effective action on each of the recommendations.
3. Based on the agency's 60-day response and the follow-up review, an internal report is prepared outlining what has been done on each specific recommendation contained in the agency review report, including a determination of the status of each recommendation (i.e., closed, or open with more follow-up work required).

Just because an agency plans to do what OGE has recommended does not mean the recommendation is closed. OGE must follow through to ensure that the plan has actually been implemented.

This may require further follow-up work to document certain actions the agency has taken.